The Latest on BEPS - 22 April 2019

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EY OECD BEPS project

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European Union

On 5-6 April 2019, an informal Economic and Financial Affairs Council (ECOFIN) meeting was held in Bucharest, Romania. According to a press release issued at the conclusion of the meeting, the Ministers discussed among other topics the role of taxation in supporting inclusive and sustainable growth, and digital taxation. With respect to digital taxation, the Secretary-General of the OECD, Angel Gurria, updated Ministers on the progress made in finding global solutions. In this context, the press release also mentions that the Commission calls on Member States to coordinate their positions and speak with one voice to have more impact and influence in international negotiations. This is why the Commission proposed to have a dedicated debate at the May ECOFIN meeting to coordinate the positions of the Member States ahead of the G20 summit and to propose specific options for this debate.

In March 2019, the European Union (EU) Joint Transfer Pricing Forum (JTPF) released its report on the application of the profit split method (PSM) within the EU (the Report).

The published Report is the first part of the JTPF's work addressing the relevant challenges in the practical application of the PSM for transfer pricing purposes.

The Report was released shortly before the present mandate of the JTPF expired on 29 March 2019. Against this background, the Secretariat of the JTPF also prepared a summary of the achievements for the present mandate during the period 2015-2019.

See EY Global Tax Alert, *EU Joint Transfer Pricing Forum releases report on application of profit split method within the EU and provides summary of achievements of present mandate*, dated 12 April 2019.

Building a better working world

Australia

On 2 April 2019, the Australian Treasurer delivered the 2019/20 Federal Budget. With respect to multinationals, the Government allocated a further AU$1 billion of funding over four years to the Australian Taxation Office (ATO) to expand the Tax Avoidance Taskforce (TAT) and will introduce minor amendments to Australia's hybrid mismatch rules. The TAT undertakes compliance activities targeting multinationals, large public and private groups and high-wealth individuals. TAT objectives include detection, understanding industries, data, analytics and intelligence capabilities. The TAT is estimated to increase ATO tax collections by AU$4.6 billion. The proposed amendments are expected to strengthen the application of the hybrid mismatch rules by clarifying how the rules apply to Multiple Entry Consolidated groups and trusts, limiting the meaning of foreign tax and clarifying that the integrity rule can apply where other provisions have applied.

Australia-Israel

On 28 March 2019, the first bilateral tax treaty between Australia and Israel was signed. The Australia-Israel treaty will have significant impact as it will reduce withholding tax rates, lower the risk of double taxation and provide better tax certainties for businesses operating in both jurisdictions. The treaty measures are aligned with the OECD BEPS/*Multilateral Convention To Implement Tax-Treaty Related Measures To Prevent Base Erosion and Profit Shifting* (MLI) program recommendations.

The preamble clarifies the express purpose of the treaty is to eliminate double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty-shopping arrangements.

The new treaty will enter into force after both countries have completed their domestic requirements and instruments of ratification have been exchanged. Legislation will be introduced into the Australian Parliament as soon as practicable to give the treaty the force of law in Australia.

Both Australia and Israel have signed the MLI and neither country has included this tax treaty as a Covered Tax Agreement (CTA). Therefore, it is expected that the treaty will not be further modified by the MLI, particularly given that it already has incorporated the treaty-related BEPS minimum standards.

Cyprus

On 5 April 2019, the Cypriot House of Representatives adopted the law implementing the provisions of the EU Anti-Tax Avoidance Directive (ATAD). The Law will come into force once it is published in the *Official Gazette* of the Republic, which is expected to take place within two weeks from the date the laws were approved. Notwithstanding the date of publication in the *Official Gazette*, the provisions of the Law apply as of 1 January 2019 (i.e., from 2019 tax year onwards). The Law introduces controlled foreign corporation (CFC) rules, a limitation to interest deductibility provision as well as a general anti-abuse rule (GAAR). Exit taxation rules and rules on hybrid mismatches will need to be transposed into Cypriot tax legislation by 1 January 2020. The public consultation process with respect to the implementation of these rules will be launched by the Cypriot Ministry of Finance in the next few weeks.

See EY Global Tax Alert, *Cyprus adopts legislation implementing EU Anti-Tax Avoidance Directive*, dated 8 April 2019.

Czech Republic

In March 2019, the Czech Government published draft legislation (accompanied by explanatory notes) implementing the EU Directive on the mandatory disclosure and exchange of cross-border tax arrangements (DAC 6 or the Directive).

The Czech draft legislation is subject to the formal legislative process and may be amended before final enactment. If implemented as currently proposed, the Czech Mandatory Disclosure Rules legislation will be broadly aligned to the requirements of the Directive.

The draft law legislative approval process outline is not known at this point.

See EY Global Tax Alert, *Czech Republic publishes draft proposal on Mandatory Disclosure Rules*, dated 17 April 2019.

Greece

On 15 April 2019, a bill adjusting the existing interest limitation rule, the CFC rule as well as the GAAR was approved by the Greek Parliament. Adjustment of the existing provisions as above was intended in order to achieve alignment to the EU ATAD. The amended rules will apply as of 1 January 2019.

India

On 8 April 2019, the Indian Tax Administration issued a circular extending the due date to locally file a Country-by-Country (CbC) report for United States (US) multinational enterprise (MNE) groups. This extension has been granted as the competent authority agreement (CAA) between the US and India is still not in effect as each party has not notified the other about the completion of all required internal procedure. Therefore, for US MNE groups with an accounting reporting year ending on or before 29 April 2018, the CbC reporting due date would now be 30 April 2019. Nonetheless, it should be noted that if the CAA is in effect by then, there would not be an obligation to locally file a CbC report by US MNE groups in India.

Ireland

On 4 April 2019, the Irish Department of Finance published the outcome of its public consultation on Ireland's implementation of interest limitation rules and hybrid mismatch rules under the EU ATAD and ATAD II. The public consultation was launched on 14 November 2018 and interested parties could submit their comments until 18 January 2019. The results of the public consultation are available on the Government's website.

Kazakhstan

On 2 April 2019, the President signed Law No. 241-VI. The adopted Law introduces certain amendments to the CFC rules in force. Among others, CFC rules will no longer apply to entities registered in a jurisdiction with which Kazakhstan has concluded a tax treaty. The amendments apply retroactively as of 1 January 2018 and will be effective until 1 January 2020.

Luxembourg

On 9 April 2019, following the adoption of the law of 7 March 2019 approving the MLI, Luxembourg deposited its instrument of approval with the OECD. It also submitted its MLI positions and a list of 81 tax treaties which Luxembourg entered into with other jurisdictions that it wishes to designate as a CTA.

The MLI will enter into force for Luxembourg on the first day of the month following the expiration of a period of three months beginning on the date of the deposit by Luxembourg of its instrument of approval, i.e., 1 August 2019.

See EY Global Tax Alert, *Luxembourg deposits instrument of approval for MLI*, dated 11 April 2019.

Malaysia

On 1 January 2019, the Malaysian Inland Revenue Board (MIRB) published the CbC Reporting (CbCR) Guidelines (the Guidelines). The Guidelines provide information and clarifications on the reporting obligations, the preparation of the CbC report, filing procedures, the submission of the CbC report, other administrative issues and penalties for non-compliance. The Guidelines also provide greater clarity on the items to be included on the report template such as tax jurisdiction, financial results and income tax paid. In addition, the Guidelines also list the CbCR requirements for Labuan and non-Labuan entities. The Guidelines are generally in line with the OECD guidelines.

The Guidelines are available on the MIRB's website.

Russia

On 17 April 2019, the Russian State Duma ratified the MLI. Russia now needs to deposit its instrument of ratification of the MLI with the OECD. The MLI will enter into force for Russia on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit of such instrument with the OECD.

On 29 March 2019, the Russian Federal Tax Service announced that it is considering joining the OECD International Compliance Assurance Programme (ICAP). ICAP is a voluntary risk assessment and assurance program designed to facilitate open and cooperative multilateral engagement between MNE groups willing to engage actively and transparently and tax administrations in jurisdictions where the MNEs have business activities. Currently, the tax authorities from 17 jurisdictions are participating in the ICAP.

Singapore

On 29 March 2019, Singapore's Minister for Finance issued several Orders in connection with the entry into force of the MLI in Singapore on 1 April 2019. The Orders amend

Singapore's CTAs for jurisdictions which had ratified the MLI as of 21 December 2018 (date of Singapore's ratification of the MLI), effectively giving the relevant MLI provisions effect under domestic law for each of the CTAs with effect from 1 April 2019. As more jurisdictions ratify the MLI, new Orders will correspondingly be issued to give the MLI effect for each new CTA as they enter into force. As of 29 March 2019, Orders have been issued for CTAs with Australia, Austria, France, Isle of Man, Israel, Japan, Jersey, Lithuania, Malta, New Zealand, Poland, Slovak Republic, Slovenia and the United Kingdom.

United Kingdom

On 11 April 2019, HM Revenue & Customs (HMRC) published the synthesized text of the Malta-United Kingdom (UK) Double Taxation Convention, displaying the modifications made to the treaty by the MLI. The synthesized text reflects the options and reservations chosen by both Malta and the UK and shows how the treaty should be impacted by the MLI. The MLI entered into force for Malta on 1 April 2019 and for the UK on 1 October 2018.

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